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Torts -- Right of Privacy in Survivors of Deceased Public Figure After Considerable Time Lapse

that any business, no matter how highly developed,[15] requiring freedom from such outside interferences as noise, light, and vibration, is to be classified as a delicate business and thus not entitled to relief unless the burdens are of a special and unreasonable nature. It would seem that darkness is a natural state which all landowners are entitled to enjoy if they so choose. In the instant case, the artificial light used was not the ordinary illumination to which one might expect to be subjected as an incident to societal life. Rather, it was an unusually strong glow. Such distinction, however, was rejected by the court which said: "The conditions of modern city life imposed upon the city dweller and his property many burdens more severe than that of light reflected upon him or it." [16] Such a view appears severe when its result is to deprive a business of the reasonable use of its land.[17]

It is submitted that the courts, in determining the problems of a modern industrial enterprise requiring freedom from outside interferences, should consider the nature of the interests involved, rather than predicate their decisions upon formalized reasoning.

TORTS—RIGHT OF PRIVACY IN SURVIVORS OF DECEASED PUBLIC FIGURE AFTER CONSIDERABLE TIME LAPSE

In 1905, plaintiffs' father disappeared under suspicious circumstances from his home in Tuscaloosa, Alabama. A member of the community was imprisoned as a murder suspect for five months and then released because the body could not be traced or found.

Twenty five years later, in 1930, the testator of a will probated in California proved to be plaintiffs' missing father, and his body was then returned to Tuscaloosa. In 1946, sixteen years thereafter, defendant radio station broadcast on a local commercial radio program a sketch, description, and history of the private and family life of the plaintiffs, including the peculiar circumstances of their father's disappearance and return.

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said, "The lights referred to are necessary to night games and would not constitute a great inconvenience to the ordinary dweller in a town." *Id.* at 246.

15. In Eastern & South African Telegraph Company v. Cape Town Tramways Companies, *supra*, the plaintiff was injured by escaping electric currents from defendant's lines until he took the precaution of installing modern equipment. The case of Noyes v. Huron & Erie Mtg. Corp., *supra*, had to do with the application of an experimental device called the projectorscope, to outdoor advertising. The court called attention to the experimental nature of the equipment in refusing damages to the plaintiff due to dispersal of light caused by defendant's floodlights illuminating his own building.

16. Amphitheaters, Inc. v. Portland Meadows, *supra* at 858.

17. Wallace & Tiernan, Inc. v. United States Cutlery Co., *supra*, where it was held that the nature of the plaintiff's business was not a defense to vibration caused by defendant which interfered with the calibration of delicate instruments; *accord*, Western Silver Fox Ranch v. Ross & Cromarty County Council, S.C. 601-Scot. (1940), where the Scottish court applied Rylands v. Fletcher (1868), L.R., H.L. 330, to a case of blasting by a contractor employed by the county, which frightened vixens on a silver fox farm causing them to destroy their cubs or abort. That court rejected the non-natural use of the land by the plaintiff as a defense.

Plaintiffs sought damages alleging an invasion of their right of privacy. *Held,* recovery denied, on the ground that plaintiffs' father had become a public figure, and thereby plaintiffs waived their right of privacy in connection with the incident. *Smith v. Doss,* 37 So.2d 118 (Ala. 1948).

Recent cases, including one in Florida,[1] have indicated that an action may be maintained for statements about an individual which are in no wise defamatory, merely because they invade his right of privacy.[2] However, the right of privacy ceases by waiver when the individual seeks publicity, or because of public interest when he becomes a public figure.[3] In both situations denial of recovery for what would otherwise be an invasion of the right of privacy appears to depend upon the consent, actual or implied, of the person entitled to the right. The instant case involves a new departure, in that the consent or waiver, if any, was by the plaintiffs' father and not by the plaintiffs whose right is alleged to have been invaded. The court, in effect, reasons that privacy, like good name, is a family affair, or a species of property which may descend from father to daughters incumbered by the waiver or consent of the father. There seems to be no basis, from other decisions, for such a departure, and the court does not give any explanation for its theory.

The court seems to find it expedient to ignore principles of law for the protection of the individual in reaching a decision for the benefit of so-called practical law in the protection of freedom of speech and press.[4] The right of privacy has developed and has been recognized, in order to protect the innocent —who have in no way personally waived that right—from the scrutiny of the public tending to injure them.[5] The law should not be construed to give an empty right, that is, to grant a right but not the means to enforce it. The action for invasion of privacy is an independent right,[6] and to deprive one of its benefits is to render it useless. Not only does this cause evil in the particular case under consideration, but also it breaks down respect for the law.

Assuming that the court was correct in holding that the fact of their father being a public figure would constitute a waiver of the right of privacy of the plaintiffs, it is submitted that after a lapse of sixteen years he should no longer be considered a public figure. It seems that there should be a time when a public figure can return to his normal and private life without inter-

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1. Cason v. Baskin, 155 Fla. 198, 20 So.2d 243 (1944).

2. 41 Am. Jur. 925. (The unwarranted appropriation or exploitation of one's personality, the publicizing of one's private affairs, with which the public has no legitimate concern, or the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities constitutes an invasion of his right of privacy.)

3. Reed v. Real Detective Publishing Co., 63 Ariz. 294, 162 P.2d 133 (1945).

4. Barber v. Time, Inc., 348 Mo. 1199, 159 S.W.2d 291 (1942); Pavesich v. New England Life Ins. Co., 122 Ga. 190, 50 S.E. 68 (1905).

5. Hinnish v. Meier & F. Co., 166 Ore. 482, 113 P.2d 438 (1941); Brents v. Morgan, 221 Ky. 765, 299 S.W. 967 (1927); Warren & Brandeis, *The Right of Privacy,* 4 HARV. L. REV. 193 (1890).

6. Pavesich v. New England Life Ins. Co., *supra.*

ference from the press and radio. Courts seem to avoid drawing a line as to the time element, so as to reach satisfactorily a point where a public personage may, by voluntarily retiring from the public's gaze, return to the status of a private individual.[7]

Two leading cases, each of which concerned publicity of an incident which had occurred many years before, have reached opposite conclusions. The courts predicated their decisions on different grounds, one allowing recovery [8] and the other denying it,[9] but both completely side-stepped consideration of the passage of time and the change of circumstances in reaching their decisions.

If the elements of lapse of time and change of conditions had been given proper weight by the courts in reaching their decisions in these cases, it is submitted that the results in both of these cases and in the case under discussion could have been more consistent.

The court in the instant case stated that the right of privacy of the plaintiffs *could* have been violated by unwarranted and offensive publicity with reference to their deceased father, but recovery was denied because the passage of time could not erase the fact that he was a public figure, since his story was a part of the community's history. Thus, there resulted a waiver of the right of privacy of himself and his family in regard to this incident. It would seem that the dissemination of news of this event which occurred sixteen years previously did, in itself, constitute such unwarranted and offensive publicity affecting these innocent members of the family living in the community that it should be actionable by them. It is true that each case presented to the court because of an alleged invasion of the right of privacy involves its own peculiar circumstances. However, it is submitted that when a court must draw the line between freedom of speech and press on the one hand, and an individual's right of privacy on the other, and there is present a considerable passage of time plus a voluntary change of circumstances, the court should not avoid these two elements in reaching its decision, but should place greater emphasis upon them.

UNEMPLOYMENT COMPENSATION—DISQUALIFICATION FOR PARTICIPATION IN A LABOR DISPUTE

Respondents, women employees of the Pacific Telephone and Telegraph Company, refused to cross a picket line maintained by a union of which they

7. 41 Am. Jur. 939.

8. Melvin v. Reid, 112 Cal. App. 285, 297 Pac. 91 (1931) (a prostitute changed her way of life, married and settled in a community. Years later a motion picture was made of her previous way of life).

9. Sidis v. F-R Pub. Corp., 113 F.2d 806 (C. C. A. 2d 1940) (a boy genius withdrew from the limelight to live a life of seclusion. After many years passed, a newspaper printed an article concerning his past life).